

## **The concept of an average consumer under Czech and European law**

### **RESUMÉ:**

The thesis is focused on the role of a so called average consumer under the law of unfair competition; namely concerning advertising and misleading labelling. The concept of an average consumer is being analysed under written law as well as in jurisprudence. The Czech and European laws are emphasized but other legal systems are also mentioned. A description of a current situation and history of the concept are accompanied by considerations de lege ferenda. Mainly the term *consumer* is being criticized as not quite suitable within the context of unfair competition. Unlike under the contract law, here the consumer does not represent an acting entity but a target or a prey.

The current trend of weakening consumer's position-and therefore exaggeration's easing in advertising-is also criticized. Generally speaking, the advertising as such is being denounced; in particular because it harms the consumer and thus it is buck passing to speak about a consumer's protection while protecting and helping a competitor in reality.

The thesis deals with practical impacts of misleading labelling on a consumer (and/or a competitor). According to its own methodology, it divides the misleading labelling into three categories: promotional, unsatisfactory and camouflage. The thesis also deals with a redefined concept of an average consumer on the internal market of the European Union.

Last but not least, the thesis focuses on procedural rights which a consumer has to enforce his legal position against unfair acting of a violator in competition. The existing provisions are marked as unusable and unenforceable in practice. A US concept of so called punitive damages is suggested as a solution. A role of legal entities authorised to protect the interests of consumers is discussed too. Next to the possibilities provided by the private law, also the tools of protecting an average consumer under public law are described.

The thesis was written as a dissertation on Charles University in Prague, Faculty of law. It was finished 21<sup>st</sup> December 2012. The methods used were especially studying and quoting articles from legal journals, following and commenting judicial decisions and own argumentation.

**KEYWORDS:** Average consumer, unfair competition, advertising, misleading labelling